SENATE BILL No. 517

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1; IC 23-4-1; IC 23-16; IC 23-18; IC 30-5-2-8.

Synopsis: Business entity mergers and redomestications. Provides for cross species business mergers. Provides for the redomestication of business entities. Includes in the definition of "principal" for the purpose of a power of attorney a corporation, a limited liability company, a trust, or a partnership. Makes conforming amendments.

Effective: July 1, 2002.

Clark

January 14, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 517

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-1-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) A corporate name:

(1) must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language; and

(2) except as provided in subsection (e), may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by IC 23-1-22-1 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation **or other business entity** incorporated or authorized to transact business in Indiana;

(2) a corporate name reserved or registered under section 2 or 3

of this chapter; and

(3) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation files its written consent to the use, signed by any current officer of the corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) A bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that a bank or trust company only is entitled to afford and perform.

(f) Except as provided in IC 23-1-49-6, this article does not control the use of fictitious names.

SECTION 2. IC 23-1-38.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 38.5. Domestication and Conversion

Sec. 1. The following definitions apply throughout this chapter:

(1) "Converting entity" means:

(A) a domestic business corporation or a domestic other entity that adopts a plan of entity conversion; or

(B) a foreign other entity converting to a domestic business corporation.

(2) "Surviving entity" means the corporation or other entity that is in existence immediately after consummation of an

entity conversion under this chapter.

Sec. 2. This chapter may not be used to effect a transaction that:

(1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;

(2) converts a nonprofit corporation to a domestic corporation or other business entity; or

(3) converts a domestic corporation or other business entity to a nonprofit corporation.

Sec. 3. If a domestic or foreign business corporation, a nonprofit corporation, or another entity may not be a party to a merger without the approval of the department of financial institutions or the department of insurance, the corporation or other entity may not be a party to a transaction under this chapter without the prior approval of the department of financial institutions or the department of insurance.

Sec. 4. (a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation. The laws of Indiana govern the effect of domesticating in Indiana under this chapter.

(b) A domestic business corporation may become a foreign business corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication in the manner provided in this section. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

(c) The plan of domestication must include:

(1) a statement of the jurisdiction in which the corporation is to be domesticated;

(2) the terms and conditions of the domestication;

(3) the manner and basis of reclassifying the shares of the corporation following its domestication into:

(A) shares or other securities;

(B) obligations;

(C) rights to acquire shares or other securities;

(D) cash;

(E) other property; or

(F) any combination of the types of assets referred to in clauses (A) through (E); and

(4) any desired amendments to the articles of incorporation of

the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended before filing the document required by the laws of Indiana or the other jurisdiction to consummate the domestication. However, after approval of the plan by the shareholders, the plan may not be amended to change:

(1) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) the articles of incorporation as they will be in effect immediately following domestication, except for changes permitted by a provision of the organic law; or

(3) any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in a material respect.

(e) If:

(1) a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured; or

(2) a contract of any kind;

that is issued, incurred, or executed by a domestic corporation before July 1, 2002, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation until the provision is amended after that date.

Sec. 5. In the case of a domestication of a domestic business corporation in a foreign jurisdiction, the following apply:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a

meeting, the corporation must notify each shareholder, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), the plan of domestication may be submitted for the approval of the shareholders:

(A) at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists; and

(B) if any class or series of shares is entitled to vote as a separate group on the plan, at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group is present.

(6) Separate voting on the plan of domestication by voting groups is required by each class or series of shares that:

(A) is to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the types of assets referred to in this clause;

(B) would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under IC 23-1-30-7; or

(C) is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) If any provision of the articles of incorporation, the bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2002, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation until the provision is amended after that date.

Sec. 6. (a) After the domestication of a foreign business corporation has been authorized as required by the laws of the

foreign jurisdiction, the articles of domestication must be executed by an officer or other duly authorized representative. The articles must set forth:

(1) the name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in Indiana or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of IC 23-1-23-1;

(2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication in that jurisdiction; and

(3) a statement that the domestication of the corporation in Indiana was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication under this chapter.

(b) The articles of domestication must either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in the articles of incorporation, or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication must be delivered to the secretary of state for filing, and are effective at the time provided in IC 23-1-18-4.

(d) If the foreign corporation is authorized to transact business in this state under IC 23-1-49, its certificate of authority is canceled automatically on the effective date of its domestication.

Sec. 7. (a) Whenever a domestic business corporation has adopted and approved, in the manner required by this chapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, an officer or another authorized representative of the corporation must execute articles of charter surrender on behalf of the corporation. The articles of charter surrender must set forth:

(1) the name of the corporation;

(2) a statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) a statement that the domestication was approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner

required by this chapter and the articles of incorporation; and

(4) the corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender must be delivered by the corporation to the secretary of state for filing. The articles of charter surrender are effective at the time provided in IC 23-1-18-4.

Sec. 8. (a) When a domestication of a foreign business corporation in Indiana becomes effective:

(1) the title to all real and personal property, both tangible and intangible, held by the corporation remains in the corporation without reversion or impairment;

(2) the liabilities of the corporation remain the liabilities of the corporation;

(3) an action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the corporation;

(5) the shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or cash or other property in accordance with the terms of the domestication as approved under the laws of the foreign jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under those laws; and

(6) the corporation is considered to:

(A) be incorporated under the laws of Indiana for all purposes;

(B) be the same corporation without interruption as the corporation that existed under the laws of the foreign jurisdiction; and

(C) have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

(b) When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, the foreign business corporation is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(2) agree that it will promptly pay the amount, if any, to which shareholders are entitled under IC 23-1-40.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in Indiana is as follows:

(1) The domestication does not discharge owner liability under the laws of the foreign jurisdiction to the extent owner liability arose before the effective time of the articles of domestication.

(2) The shareholder does not have owner liability under the laws of the foreign jurisdiction for a debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of the foreign jurisdiction.

(4) The shareholder has whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of that jurisdiction.

Sec. 9. (a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this chapter, and at any time before the domestication has become effective, the plan of domestication may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned under this section, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement is effective upon filing and the domestication is abandoned and may not become effective.

(c) If the domestication of a foreign business corporation in Indiana is abandoned under the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement is

effective upon filing and the domestication is abandoned and may not become effective.

Sec. 10. (a) A domestic business corporation may become a domestic other entity under a plan of entity conversion. If the organic law of the other entity does not provide for a conversion, section 14 of this chapter governs the effect of converting to that form of entity.

(b) A domestic business corporation may become a foreign other entity only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(c) A domestic other entity may become a domestic business corporation. Section 14 of this chapter governs the effect of converting to a domestic business corporation. If the organic law of a domestic other entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity, and its interest holders are entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved, the entity conversion effectuated, and appraisal rights exercised, in accordance with the procedures set forth in this chapter and in IC 23-1-40. Without limiting the provisions of this subsection, a domestic other entity whose organic law does not provide procedures for the approval of an entity conversion is subject to subsection (e) and section 12(7) of this chapter. For purposes of applying this chapter and IC 23-1-40:

(1) the other entity and its interest holders, interests, and organic documents taken together are considered a domestic business corporation and the shareholders, shares, and articles of incorporation of a domestic business corporation, as the context may require; and

(2) if the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group is considered the board of directors.

(d) A foreign other entity may become a domestic business corporation if the organic law of the foreign other entity authorizes it to become a corporation in another jurisdiction. The laws of this state govern the effect of converting to a domestic business

corporation under this chapter.

(e) If a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic business corporation before July 1, 2002, applies to a merger of the corporation and the document does refer to an entity conversion of the corporation, the provision applies to an entity conversion of the corporation until the provision is amended after that date.

Sec. 11. (a) A plan of entity conversion must include:

(1) a statement of the type of other entity that the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) the manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the types of assets referred to in this subdivision; and

(4) the full text, as in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that after the approval of the plan by the shareholders the plan may not be amended to change:

(1) the amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders;

(2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity; or

(3) any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

Sec. 12. In the case of an entity conversion of a domestic business corporation to a domestic other entity or foreign other entity, the following apply:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of

directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), approval of the plan of entity conversion requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists.

(6) In addition to the vote required under subdivision (5), separate voting on the plan of equity conversion by voting groups is also required by each class or series of shares. Unless the articles of incorporation, or the board of directors acting under subdivision (3), requires a greater vote or a greater number of votes to be present, if the corporation has more than one (1) class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group is present.

(7) If any provision of the articles of incorporation, the bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before July

1, 2002, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision applies to an entity conversion of the corporation until the provision is subsequently amended.

(8) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion requires the execution, by each shareholder, of a separate written consent to become subject to the owner liability.

Sec. 13. (a) After conversion of a domestic business corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

(1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;

(2) state the type of other entity that the surviving entity will be;

(3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and

(4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic business corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the other

entity;

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a foreign other entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the other entity was duly approved in the manner required by its organic law; and

(4) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(d) The articles of entity conversion must be delivered to the secretary of state for filing and take effect at the effective time provided in IC 23-1-18-4.

(e) If the converting entity is a foreign other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

Sec. 14. (a) Whenever a domestic business corporation has

adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the corporation to be converted to a foreign other entity, articles of charter surrender must be executed on behalf of the other corporation by any officer or other duly authorized representative. The articles of charter surrender must set forth:

(1) the name of the corporation;

(2) a statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign other entity;

(3) a statement that the conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation;

(4) the jurisdiction under the laws of which the surviving entity will be organized; and

(5) if the surviving entity will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender must be delivered by the corporation to the secretary of state for filing. The articles of charter surrender take effect on the effective time provided in IC 23-1-18-4.

Sec. 15. (a) When a conversion under this section in which the surviving entity is a domestic business corporation or domestic other entity becomes effective:

(1) the title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(2) the liabilities of the converting entity remain the liabilities of the surviving entity;

(3) an action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(4) in the case of a surviving entity that is a filing entity, the articles of conversion, or the articles of incorporation or public organic document attached to the articles of conversion, constitute the articles of incorporation or public organic document of the surviving entity;

(5) in the case of a surviving entity that is a nonfiling entity, the private organic document provided for in the plan of conversion constitutes the private organic document of the surviving entity;

(6) the share or interests of the converting entity are

reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or their securities, or into cash or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided in the plan of conversion and to any rights they may have under IC 23-1-40; and

(7) the surviving entity is consider to:

(A) be a domestic business corporation or other entity for all purposes;

(B) be the same corporation or other entity without interruption as the converting entity that existed before the conversion; and

(C) have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(2) agree that it will promptly pay the amount, if any, to which the shareholders referred to in subdivision (1) are entitled under IC 23-1-40.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity is personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an other entity that converts to a domestic business corporation is as follows:

(1) The conversion does not discharge any owner liability under the organic law of the other entity to the extent that any such owner liability arose before the effective time of the articles of entity conversion.

(2) The interest holder does not have owner liability under the organic law of the other entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion.

(3) The provisions of the organic law of the other entity

continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

(4) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the other entity with respect to any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

Sec. 16. (a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by this chapter, and at any time before the entity conversion becomes effective, the plan of entity conversion may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion becomes effective, a statement that the entity conversion has been abandoned under this section, executed by an officer or authorized representative, must be delivered to the secretary of state for filing before the effective date of the entity conversion. Upon filing the statement takes effect and the entity conversion is considered abandoned and shall not become effective.

SECTION 3. IC 23-1-40-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 8. (a) As used in this section, "other business entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.**

(b) As used in this section "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic corporations may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the

following requirements are met:

(1) Each domestic corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3)The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is

vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity, and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic corporations with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic corporations with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

SECTION 4. IC 23-4-1-45, AS AMENDED BY P.L.277-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 45. (a) To qualify as a limited liability partnership, a partnership under this chapter must do the following:

(1) File a registration with the secretary of state in a form determined by the secretary of state that satisfies the following:

(A) Is signed by one (1) or more partners authorized to sign the registration. A signature on a document under this clause that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(i) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(ii) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(B) States the name of the limited liability partnership, which must:

(i) contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of the name; and

(ii) be distinguishable upon the records of the secretary of state from the name of a limited liability partnership **or other business entity** registered to transact business in Indiana.

(C) States the address of the partnership's principal office.

(D) States the name of the partnership's registered agent and the address of the partnership's registered office for service of process as required to be maintained by section 50 of this chapter.

(E) Contains a brief statement of the business in which the partnership engages.

(F) States any other matters that the partnership determines to include.

(G) States that the filing of the registration is evidence of the partnership's intention to act as a limited liability partnership.

(2) File a ninety dollar ($90) registration fee with the registration.

(b) The secretary of state shall grant limited liability partnership status to any partnership that submits a completed registration with the required fee.

(c) Registration is effective and a partnership becomes a limited liability partnership on the date a registration is filed with the secretary of state or at any later date or time specified in the registration. The registration remains effective until it is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice under section 45.2 of this chapter.

(d) The status of a partnership as a limited liability partnership and the liability of a partner of a limited liability partnership is not

adversely affected by errors or subsequent changes in the information stated in a registration under subsection (a).

(e) A registration on file with the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the registration.

SECTION 5. IC 23-4-1-53 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 53. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law.**

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability partnerships may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited liability partnership that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited liability partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the partnership shares of the limited liability partnership that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability partnership that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a

party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability partnerships with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability partnerships with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

SECTION 6. IC 23-16-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) must contain the words "limited partnership" or the abbreviation "L.P.";

(2) may not contain the name of a limited partner unless:

(A) it is also the name of a general partner or the corporate name of a corporate general partner; or

(B) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its partnership agreement; and

(4) except as provided in subsection (b), must be such as to distinguish it upon the records in the office of the secretary of state from the name of any limited partnership **or other business entity** reserved, registered, or organized under the laws of Indiana or qualified to do business or registered as a foreign limited partnership in Indiana.

(b) A limited partnership may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize use of the name applied for if:

(1) the other domestic or foreign limited partnership **or other business entity** files its written consent to the use of its name, signed by any current general partner of the other limited partnership and verified subject to the penalties for perjury; or

(2) the applicant delivers to the secretary of state a certified copy of a final court judgment establishing the applicant's right to use the name applied for in Indiana.

SECTION 7. IC 23-16-3-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 13. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law.**

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited partnerships may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited partnership corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other

domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited partnership shares of each domestic limited partnership that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) will be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(e) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited partnerships with or into one (1) or more other business entities.

(f) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited partnerships with or into one (1) or more foreign corporations must be made solely according to the requirements of this section.

SECTION 8. IC 23-18-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) The name of each limited liability company as set forth in its articles of organization:

(1) must contain the words "limited liability company" or either of the following abbreviations:

(A) "L.L.C."; or

(B) "LLC";

(2) may contain the name of a member or manager; and

(3) except as provided in subsection (b), must be such as to distinguish the name upon the records of the office of the secretary of state from the name of any limited liability company **or other business entity** reserved, registered, or organized under the laws of Indiana or qualified to transact business as a foreign limited liability company in Indiana.

(b) A limited liability company may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize the use of the name applied for if:

(1) the other domestic or foreign limited liability company **or other business entity** files its written consent to the use of its name; or

(2) the applicant delivers to the secretary of state a certified copy of a final court judgment from a circuit or superior court in the state of Indiana establishing the applicant's right to use the name applied for in Indiana.

SECTION 9. IC 23-18-7-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 9. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.**

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability companies may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited liability company that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management thereof is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability company that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a

general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability companies with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability company with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

SECTION 10. IC 30-5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. "Principal" means:

(1) an individual, including an individual acting as a:

~~(1)~~ **(A)** trustee;

~~(2)~~ **(B)** personal representative; or

~~(3)~~ **(C)** fiduciary;

(2) a corporation;

(3) a limited liability company;

(4) a trust; or

(5) a partnership;

who signs a power of attorney granting powers to an attorney in fact.